

representations based on the actual effective date of the transaction.

PART 4245—NOTICE OF INSOLVENCY

Sec.

- 4245.1 Purpose and scope.
- 4245.2 Definitions.
- 4245.3 Notice of insolvency.
- 4245.4 Contents of notice of insolvency.
- 4245.5 Notice of insolvency benefit level.
- 4245.6 Contents of notice of insolvency benefit level.
- 4245.7 PBGC address.
- 4245.8 Computation of time.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1426(e).

SOURCE: 61 FR 34115, July 1, 1996, unless otherwise noted.

§ 4245.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe notice requirements pertaining to insolvent multiemployer plans that are in reorganization.

(b) *Scope.* This part applies to multiemployer plans in reorganization covered by title IV of ERISA, other than plans that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA.

§ 4245.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, multiemployer plan, non-forfeitable benefit, PBGC, person, plan, and plan year.

In addition, for purposes of this part:

Actuarial valuation means a report submitted to the plan in connection with a valuation of plan assets and liabilities, which, in the case of a plan covered by subparts C and D of part 4281, shall be performed in accordance with subpart B of part 4281.

Available resources means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from the PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA, or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

Reasonably expected to enter pay status means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

Reorganization means reorganization under section 4241(a) of ERISA.

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

§ 4245.3 Notice of insolvency.

(a) *Requirement of notice.* A plan sponsor of a multiemployer plan in reorganization that determines under section 4245 (b)(1), (d)(1) or (d)(2) of ERISA that the plan's available resources are or may be insufficient to pay benefits when due for a plan year shall so notify the PBGC and the interested parties, as defined in paragraph (e) of this section. A single notice may cover more than one plan year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4245.4.

(b) *When delivered.* A plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after it determines that the plan

is or may become insolvent, as described in paragraph (a) of this section. However, the notice to participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made more than 30 days after the determination of insolvency.

(c) *Delivery to PBGC*—(1) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing the notice of insolvency with the PBGC under this part.

(2) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a notice of insolvency under this part was filed with the PBGC.

(d) *Delivery to interested parties*—(1) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of insolvency to interested parties. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(2) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that the notice of insolvency was issued.

(e) *Interested parties.* For purposes of this part, the term "interested parties" means—

(1) Employers required to contribute to the plan;

(2) Employee organizations that, for collective bargaining purposes, represent plan participants employed by such employers; and

(3) Plan participants and beneficiaries.

§ 4245.4 Contents of notice of insolvency.

(a) *Notice to the PBGC.* A notice of insolvency required to be filed with the PBGC pursuant to § 4245.3 shall contain the information set forth below:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The IRS key district that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned to the plan by the PBGC. If the plan has no case number, the notice shall state whether the plan has previously filed a notice of insolvency with the PBGC and, if so, the date on which the notice was filed.

(6) The plan year or years for which the plan sponsor has determined that the plan is or may become insolvent.

(7) A copy of the plan document, including the last restatement of the plan and all subsequent amendments in effect, or to become effective, during the insolvency year or years. However, if a copy of the plan document was submitted to the PBGC with a previous notice of insolvency or notice of insolvency benefit level, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan document was filed.

(8) A copy of the most recent actuarial valuation for the plan and a copy of the most recent Schedule B (Form 5500) filed for the plan, if the Schedule B contains more recent information than the actuarial valuation. If the actuarial valuation or Schedule B was previously submitted to the PBGC, it may be omitted, and the notice shall state the date on which the document was filed and that the information is still accurate and complete.

[61 FR 34115, July 1, 1996, as amended at 68 FR 61357, Oct. 28, 2003]